IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7955 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HYNOUP FOOD & OIL IND.LTD.

Versus

STATE OF GUAJRAT THR' SECRETARY

Appearance:

1. Special Civil Application No. 7955 of 2005

MR SS PANESAR for Petitioner No. 1-2

MR DIPEN DESAI, AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 06/05/2005

ORAL JUDGEMENT

1. Rule. Shri Dipen Desai, learned AGP waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final

hearing today.

2. In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the District Magistrate, Mehsana dated 2.4.2005 by which on non-payment of the installment granted by the District Magistrate, Mehsana while granting no objection certificate for storage of petroleum products, the no objection certificate has been cancelled.

3. It appears from the record that the case was filed against the petitioner company under the provisions of Essential Commodities Act and the order came to be passed directing the petitioner to pay an amount of Rs.4,82,432/-. On the request was made by the petitioner and on giving 42 post dated cheques each for an amount of Rs.10,000/- and on payment of Rs.48243/- on 30.12.2004, the District Magistrate, Mehsana granted no objection certificate for storage of petroleum products on condition that the petitioner was required to pay Rs.10,000/- every month towards the aforesaid payment of Rs 4,82,432/-. It appears from the record that, as, the petitioner did not pay the installment for the month of February, 2005 and there was a breach of assurance given by the petitioner as well as the condition of grant of NOC, the District Magistrate, Mehsana by order dated 2.4.2005 cancelled the NOC.

4. Mr.S.S.Panaser, learned advocate appearing for the petitioner, has submitted that due to some financial problems, the petitioner could not pay the installment of February, 2005 and the installment of February, 2005 was paid along with installment of March, 2005. It is further submitted that even the petitioner has also paid the installment of April, 2005. It is, therefore, requested to set aside the order passed by the District Magistrate, Mehsana dated 2.4.2005 by which the no objection certificate which was granted in favour of the petitioner is cancelled. Mr.Panaser has submitted that the petitioner has submitted the undertaking to make the payment to the effect that the petitioner undertakes to make the payment of monthly installment of Rs. 10,000/regularly as agreed and undertakes to abide by the schedule of payment as agreed by them for which the petitioner - company has given post dated cheques to the respondent no 2.

5. Mr. Dipen Desai, learned AGP has submitted that in view of the fact that the petitioner did not make the payment of installments as agreed by the petitioner and

the installment of February, 2005 was not paid, the District Magistrate, Mehsana is justified in cancelling the NOC.

6. Considering the facts and circumstances of the case, more particularly, considering the fact that the installment of February, 2005 was paid by the petitioner immediately along with the installment of the next month i.e. March, 2005 and considering the undertaking submitted by the petitioner which is directed to be taken on record and on further direction to the petitioner to abide by the same and to make the payment of monthly installment of the amount of Rs. 10,000/- regularly as agreed and as per their communication dated 29.12.2004 with a view to give a last opportunity, the impugned order dated 2.4.2005 cancelling the NOC for storage of petroleum products which was granted to the petitioner is directed to be quashed and set aside. It is however, made clear that if there is any breach of single installment, the respondent authority will be entitled to cancel the NOC without even any prior notice to the petitioner.

7. For the reasons stated above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)